

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

OCTAVIO HERNANDEZ SUAREZ,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CR. NO. S-02-0246 EJG  
CIV. NO. S-06-2728 EJG

ORDER WAIVING ATTORNEY-CLIENT  
PRIVILEGE, COMPELLING  
DISCLOSURE, AND GRANTING  
EXTENSION

In response to defendant's § 2255 motion to vacate, set aside or correct his sentence, the government has filed an application seeking an order waiving attorney-client privilege, compelling disclosure of certain information, and granting an extension of time to file its response to the motion. The motion is GRANTED.

By raising the issue of ineffective assistance of counsel, defendant has waived the issue of attorney-client privilege for all matters challenged. However, the waiver is limited by the nature of the claims. In his § 2255 motion defendant raises two instances of alleged ineffective assistance: 1) failure to

1 communicate a plea offer; and 2) failure to inform him of all  
2 possible plea options. Accordingly, the privilege is deemed  
3 waived with respect to all communications between defendant and  
4 his counsel Steve Bauer, and others providing legal assistance  
5 (including interpreters), concerning 1) plea offers made by the  
6 government, and 2) all possible plea options, during the  
7 prosecution of United States v. Octavio Suarez, Cr. No. S-02-0246  
8 EJG.

9 In addition, based on the government's application, the  
10 court finds that the United States cannot properly respond to  
11 defendant's allegations of ineffectiveness without disclosure of  
12 all communications between defendant and his counsel, and others  
13 providing legal assistance (including interpreters) concerning 1)  
14 plea offers made by the government, and 2) all plea options  
15 during the prosecution of the above-entitled case.

16 Finally, the government's request for an extension of 60  
17 days in which to respond to the § 2255 motion is GRANTED. The  
18 government shall file with the court and serve on defendant its  
19 response within 60 days from the filing date of this order.  
20 Defendant may file a reply within 30 days after service of the  
21 government's response.

22 IT IS SO ORDERED.

23 Dated: August 29, 2007

24 /s/ Edward J. Garcia  
25 EDWARD J. GARCIA, JUDGE  
26 UNITED STATES DISTRICT COURT

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